

AMENDED IN ASSEMBLY AUGUST 19, 2016

AMENDED IN ASSEMBLY AUGUST 17, 2016

AMENDED IN ASSEMBLY JUNE 8, 2016

AMENDED IN ASSEMBLY JUNE 1, 2016

AMENDED IN SENATE MAY 3, 2016

AMENDED IN SENATE MARCH 28, 2016

SENATE BILL

No. 1190

Introduced by Senator Jackson

(~~Coauthor:~~ *Coauthors: Assembly Member Members O'Donnell and Williams*)

February 18, 2016

An act to amend Sections 30315, 30321, 30322, and 30324 of, and to add Section 30327.2 to, the Public Resources Code, relating to the California Coastal Commission.

LEGISLATIVE COUNSEL'S DIGEST

SB 1190, as amended, Jackson. California Coastal Commission: ex parte communications: staff communications.

The California Coastal Act of 1976, establishes the California Coastal Commission, and prescribes the membership and functions and duties of the commission. The act requires the commission to meet at least 11 times annually at a place convenient to the public.

This bill would require the commission, commencing on or before July 1, 2017, to also provide public access to all commission meeting via telephone and video conferencing. The bill would require the commission to include in the executive summary section of a staff report

references to any materials submitted for the public record that are determined not to relate to a matter within the commission's jurisdiction.

For purposes of the act, an "ex parte communication" is defined as any oral or written communication between a member of the commission and an interested person, as defined, about a matter within the commission's jurisdiction, as defined, that does not occur in a public hearing, workshop, or other official proceeding or on the official record of the proceeding on the matter, but excludes from that definition certain communications, including communications between a staff member acting in his or her official capacity and any commission member or interested person, as prescribed. The act prohibits a commission member and an interested person from conducting an ex parte communication unless the member fully discloses and makes public the ex parte communication, as specified, and prohibits a commission member or alternate from making, participating in making, or in any other way attempting to use his or her official position to influence a commission decision about which the member or alternate has knowingly had an ex parte communication that has not been reported.

This bill would prohibit a commission member or an interested person from intentionally conducting any ex parte communication *on a matter within the commission's jurisdiction, as defined*, or any oral or written communication regarding a pending enforcement investigation that does not occur in a public hearing, workshop, or other official proceeding, or on the official record of the proceeding on the matter. The bill would require a commission member to report these communications in writing, would require the report to be placed in the public record, and would prohibit a commission member from voting on or otherwise participating in any commission proceeding to which one of these communications applies, even if the communication is reported. The bill would exclude from the above provisions a project site visit by commission members and staff that meets certain requirements and communications conducted by a commission member while acting in his or her capacity as a local government official, as specified.

This bill would also require the commission to adopt, at a duly noticed public hearing, a policy that prohibits a commission member from using or attempting to use his or her official position to place undue influence, as defined, on commission staff. The bill would forever disqualify a commission member or alternate who willfully violates that provision from holding any position at the commission.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 30315 of the Public Resources Code is
2 amended to read:

3 30315. (a) The commission shall meet at least 11 times
4 annually at a place convenient to the public. Each meeting shall
5 occur not more than 45 days after the previous meeting. All
6 meetings of the commission shall be open to the public.

7 (b) A majority of the total appointed membership of the
8 commission shall constitute a quorum. An action taken by the
9 commission under this division requires a majority vote of the
10 members present at the meeting of the commission, with a quorum
11 being present, unless otherwise specifically provided for in this
12 division.

13 (c) Commencing on or before July 1, 2017, the commission also
14 shall provide public access to all commission meetings via
15 telephone and video conferencing.

16 SEC. 2. Section 30321 of the Public Resources Code is
17 amended to read:

18 30321. (a) For purposes of this article, “a matter within the
19 commission’s jurisdiction” means any permit action, federal
20 consistency review, appeal, local coastal program, port master
21 plan, public works plan, long-range development plan, categorical
22 or other exclusions from coastal development permit requirements,
23 or any other quasi-judicial matter requiring commission action,
24 for which an application has been submitted to the commission.

25 (b) Commission staff shall include in the executive summary
26 section of a staff report references to any materials submitted for
27 the public record that are determined not to relate to a matter within
28 the commission’s jurisdiction, including information about how
29 to locate copies of those materials.

30 SEC. 3. Section 30322 of the Public Resources Code is
31 amended to read:

32 30322. (a) For purposes of this article, except as provided in
33 subdivision (b), an “ex parte communication” is any oral or written
34 communication between a member of the commission and an
35 interested person, about a matter within the commission’s

1 jurisdiction, which does not occur in a public hearing, workshop,
2 or other official proceeding, or on the official record of the
3 proceeding on the matter.

4 (b) The following communications are not ex parte
5 communications:

6 (1) Any communication between a staff member acting in his
7 or her official capacity and any commission member or interested
8 person.

9 (2) Any communication limited entirely to procedural issues,
10 including, but not limited to, the hearing schedule, location, format,
11 or filing date.

12 (3) Any communication which takes place on the record during
13 an official proceeding of a state, regional, or local agency that
14 involves a member of the commission who also serves as an official
15 of that agency.

16 (4) Any communication between a member of the commission,
17 with regard to any action of another state agency or of a regional
18 or local agency of which the member is an official, and any other
19 official or employee of that agency, including any person who is
20 acting as an attorney for the agency.

21 (5) Any communication between a nonvoting commission
22 member and a staff member of a state agency where both the
23 commission member and the staff member are acting in an official
24 capacity.

25 (6) Any communication to a nonvoting commission member
26 relating to an action pending before the commission, where the
27 nonvoting commission member does not participate in that action,
28 either through written or verbal communication, on or off the
29 record, with other members of the commission.

30 (7) Any communication conducted by a commission member
31 while acting in his or her capacity as a local government official
32 and prior to the time the matter to which the communication applies
33 was pending before the commission.

34 (8) Any project site visit conducted pursuant to subdivision (b)
35 of Section 30324.

36 SEC. 4. Section 30324 of the Public Resources Code is
37 amended to read:

38 30324. (a) No commission member, nor any interested person,
39 shall intentionally conduct either of the following:

1 (1) An ex parte ~~communication~~. *communication on a matter*
2 *within the commission's jurisdiction, as defined by Section 30321.*

3 (2) An oral or written communication regarding a pending
4 enforcement investigation that does not occur in a public hearing,
5 workshop, or other official proceeding, or on the official record
6 of the proceeding on the matter.

7 (b) Notwithstanding subdivision (a), commission members and
8 commission staff may conduct a project site visit if the proposed
9 site visit is approved by a majority vote of the commission and
10 with the permission of the property owner. A description of the
11 site visit shall be a part of the public record of the matter to which
12 the project site pertains and any communications conducted during
13 the site visit shall be limited to those between commission members
14 and staff.

15 (c) (1) If a commission member, or any interested person,
16 conducts a communication that is in violation of subdivision (a),
17 the commission member shall fully disclose and make public the
18 communication by providing a full report of the communication
19 to the executive director within seven days after the communication
20 or, if the communication occurs within seven days of the next
21 commission hearing, to the commission in writing to be included
22 on the record of the proceeding at that hearing.

23 (2) Notwithstanding Section 30327, if a commission member
24 conducts a communication that is in violation of subdivision (a),
25 he or she shall not vote on or otherwise participate in any
26 commission proceeding to which the communication applies.

27 (d) (1) The commission shall adopt standard disclosure forms
28 for reporting communications that are in violation of subdivision
29 (a), which shall include, but not be limited to, all of the following
30 information:

31 (A) The date, time, and location of the communication.

32 (B) (i) The identity of the person or persons initiating and the
33 person or persons receiving the communication.

34 (ii) The identity of the person on whose behalf the
35 communication was made.

36 (iii) The identity of all persons present during the
37 communication.

38 (C) A complete, comprehensive description of the content of
39 the communication, including a complete set of all text and graphic
40 material that was part of the communication.

1 (2) The executive director shall place in the public record any
2 report made pursuant to this section.

3 SEC. 5 Section 30327.2 is added to the Public Resources Code,
4 to read:

5 30327.2. (a) The commission shall adopt, at a duly noticed
6 public hearing, a policy that prohibits a commission member or
7 alternate from using or attempting to use his or her official position
8 to place undue influence, as defined by Section 1575 of the Civil
9 Code, on commission staff.

10 (b) This section shall not be construed to prohibit a
11 commissioner or alternate from communicating with, or providing
12 information to, commission staff members about matters before
13 the commission.

14 (c) A commission member or alternate who willfully violates
15 subdivision (a) is forever disqualified from holding any position
16 at the commission.

17 (d) This section is intended to protect the public interest by
18 ensuring that commission members and alternates do not unduly
19 influence the contents of a staff report, analysis, or
20 recommendation.